

**Update on Moss Landing Power Plant and Pilot Desalination Plants
[Peter von Langen 805/549-3688]**

The Moss Landing Power Plant NPDES permit has been on Administrative Extension since October 2005. Water Board staff plans to propose a renewed NPDES for the facility in 2007, after the federal court issues its decision regarding litigation over Clean Water Act Section 316(b) regulations. That decision is expected sometime in late 2006. Also, the existing permit for the Moss Landing Power Plant is still in litigation due to a lawsuit by Voices of the Wetlands. Staff recommends against proposing a renewed Moss Landing Power Plant permit to the Water Board until the courts resolve these issues. In the meantime, the existing NPDES permit is in full regulatory force.

Ms. Madeline Clark of the Elkhorn Slough Coalition requested that staff propose a renewed NPDES permit for the Moss Landing Power Plant sooner, rather than after the courts resolve the lawsuits mentioned above. Communications between staff and Ms. Clark are included here as Attachments 1, 2, and 3. Ms. Clark requests a hearing on the Moss Landing Power Plant permit primarily because a pilot desalination project (proposed by California American Water Company) will utilize the intake and outfall structure of the power plant.

The pilot desalination project will use approximately 0.14 million gallons per day (MGD) of heated seawater from the Moss Landing Power Plant

once-through cooling flow. The pilot desalination project will produce brine and product water, recombine the brine and product water back to its original composition as seawater, and recombine that flow with the much larger Power Plant cooling water flow, which discharges approximately 600 feet offshore of Moss Landing. The average Power Plant discharge flow volume is 540 MGD. The flow volume of the pilot desalination project will be 0.14 MGD, or 0.026% of the Power Plant discharge. The Power Plant discharge and the pilot desalination discharge are permitted separately. Staff is enrolling the pilot desalination discharge under the Water Board's low-threat discharge permit (see item No. X on this agenda).

Status of State Board and State Lands Commission Policies Regarding Once-through Cooling

The State Lands Commission adopted a resolution regarding once-through cooling on April 17, 2006 (Attachment 4). The resolution acknowledges the impacts caused by once-through cooling, encourages the use of technologies to reduce the impacts, and requires utilities to be in compliance with the laws and regulations regarding once-through cooling as a condition of lease agreements between the Lands Commission and utilities. The resolution does not prohibit once-through cooling.

The California Ocean Protection Council also adopted a resolution regarding once-through cooling and funded an engineering and operations study of coastal power plants that use once-through cooling. The study will investigate technologies to reduce the impacts of once-through cooling at power plants in California.

State Water Board staff also drafted a policy regarding once-through cooling, and is currently conducting workshops to get public input on the draft policy. The draft policy addresses the scope of assessments that should be done, assessment methods that should be used (based largely on the work done on our power plant projects), and requirements to reduce or offset impacts, including the use of mitigation. State Board staff is also conducting a training workshop for Water Board staff and other agencies regarding the assessment of once-through cooling water impacts, technologies to reduce impacts, and relevant regulations.

Staff will continue to update the Water Board regarding Central Coast Region power plants and once-through cooling issues as they develop.

Attachments

1. Correspondence by email between Ms. Clark and Central Coast Water Board staff
2. March 30, 2006 letter from Central Coast Water Board staff to Ms. Clark

3. June 20, 2006 letter from Central Coast Water Board staff to Ms. Clark
4. Resolution by the California State Lands Commission Regarding Once-Through Cooling in California Power Plants

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From: Madeleine Clark <madeleine@got.net>
To: Peter von Langen <Pvonlangen@waterboards.ca.gov>
Date: 3/26/2006 10:14 AM
Subject: Re: Duke's Expired NPDES Permit & Desal Discharge
CC: <chewitt@waterboards.ca.gov>

Easily corrected. Please notify me of future "misunderstandings" in a timely manner, not a month after the fact. Has Pajaro-Sunny Mesa (or Poseidon Resources) been issued a NPDES permit for their pilot desalination project? I'm curious why you didn't notified us about their application or issuance of their permit. Have I been unclear about our desire to be informed about such developments? Please suggest who we should contact in order to obtain information relating to NPDES permits in Moss Landing. I assumed that person was you.

Thank you again for your assistance.

on 3/24/06 5:13 PM, Peter von Langen at Pvonlangen@waterboards.ca.gov wrote:

Thanks,
Peter

The enclosed attachments are my letter to the water board and one of the articles sent with my letter (electronic version of original newspaper copy). The following newspaper article was also enclosed with my correspondence. The letter and both articles were sent on February 23, 2006.

Thank you for your attention to my inquiry. Please forward to Harvey Packard so he will have some background when I contact him regarding our concerns.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

Power Grab

Environmentalists hope Duke Energy sale and permit expiration will make for a more Slough-friendly plant.

Jan 19, 2006

By Ryan Masters

Full of Energy: Despite potential hold-ups due to the sale of their plant, Duke spokespeople insist it's full steam ahead. Jane Morba

It's too soon to tell how Duke Energy's plans to sell its Moss Landing power plant may affect the proposed desalination project. But local environmentalists hope that the sale coupled with the impending renewal of the plant's pollution discharge permit will give the public a bargaining chip in the ongoing effort to clean up the power plant's operation, with or without a desal project onsite.

Last week, Duke Energy announced the sale of eight power plants (four of them in California) to a subsidiary of LS Power Equity Partners, an investment firm that specializes in the energy industry, for about \$1.5 billion. The other California plants to be sold are a 165-watt peaker plant in Oakland; a 1,002-megawatt plant at Morro Bay, and a 10-year lease on a 700-megawatt plant in Chula Vista.

Coincidentally, Duke Energy's National Pollutant Discharge Elimination System (NPDES) permit for the 538-megawatt Moss Landing power plant expired at the end of 2005. The Clean Water Act prohibits the discharge of pollutants without a NPDES permit. The Central Coast Regional Water Quality Control Board will review that permit in June. In the meantime, the permit has been automatically renewed.

Environmentalists like Madeline Clark of the Elkhorn Slough Coalition say the timing for the renewal of the permit, which expires every five years, is ³perfect.²

³With that permit coming up for renewal,² she says, ³it gives us a great opportunity for full disclosure and what the intentions or options are regarding the desal plant. These permits are only good for five years so it gives the public an opportunity to weigh in on mitigation measures and lessen effects that the power plant may have on the environment.²

Clark has reason to be optimistic. The permit's renewal in 2000 resulted in significant changes to power plant operations, which proved beneficial to

the Slough.

³We were delighted with the last go around,² Clark says. ³When Duke bought the power plant [from PG&E in 1998] and had to get their first permit in 2000, a lot of things were brought to the public's attention. The old part of the plant used 90 percent of the facility's water. Consequently, because of strong objections, Duke no longer uses the old part of the plant. The impact was too great.²

In this go round, when the permit review process begins in five months, Clark says she hopes that the old part of the plant, which is still used as a ³peaker plant² to meet high demands for energy during cold snaps and heat waves, will be permanently mothballed.

David Hicks, a Duke spokesperson, says that there is no correlation between the plant's sale and the expiration of the NPDES permit. ³Moss is one of eight plants being sold,² Hicks says. ³There are much larger stakes here.²

As for the desalination plant, Hicks is optimistic that the sale will not hinder the project. ³Duke and the new owners will live up to whatever agreements were made,² he says. ³It's safe to say that the pilot plant will go forward as planned.²

Clark is quick to point out that her organization is not ³against² the power plant.

³We just want to make sure the Elkhorn Slough is protected and whatever is done is done right,² she says. ³That means little or no impact to the Slough. We just want to save the Elkhorn Slough.²

Darpan Kapadia, managing director of the LS Power Group, told the Weekly that ³there's very little or nothing² he could say about the transaction or its repercussions other than the fact that the firm is ³committed to making the transition of assets from Duke to LS Power a smooth one for the employees and the local communities.²

From: Madeleine Clark <madeleine@got.net>
Date: Tue, 21 Mar 2006 11:51:47 -0800
To: Peter von Langen <Pvonlangen@waterboards.ca.gov>
Subject: Re: Desal and Expired NPDES Permit

Dear Peter:

I've been away and will be leaving again shortly for a trip out of the country. I wish to pursue your (following) response to my concerns and reiterate my request for information

not provided. At your earliest convenience will you review this communication and respond to the several questions left unanswered? I realize how busy you are; **we have to use our limited staff resources efficiently**. A good way to do that is to avoid needless repetition.

An expired permit on administrative extension may be legal, but it is still expired. Therefore, my questions are not moot. Duke is responsible for what comes out of *their* discharge. Throwing Duke's permit into litigation limbo does not exempt them from mandates of the Clean Water Act. The water board staff may have a lot on their plate, but avoiding critical and controversial issues won't make them go away.

Thank you again for your help, Peter. I'll look forward to discussing this with you when I get back on April 3rd. If you don't know the answer, please so state (in bold) after the question and if possible provide me with the person's name who does have the information.

I'm sorry about your grandmother. My prayers are with you.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

on 3/2/06 2:50 PM, Peter von Langen at Pvonlangen@waterboards.ca.gov wrote:

Madeleine,

Got your phone messages, sorry for not being able to respond sooner. I was sick last week and my grandmother passed away last Wednesday so have been out of town until yesterday.

See responses to your email below in **bold**.

Best Regards,

Peter

>>> Madeleine Clark <madeleine@got.net> 2/22/2006 12:08 PM >>>

Peter:

What happens if they fail to contact you? If they do contact you, does the request go before the board or does staff handle it internally? At what point does the public weigh in? If the existing permit is expired, how do you modify it? How is enforcement implemented?

I've contacted several stakeholders and policymakers about our concerns and without exception, people are perplexed that Duke could add brine to their discharge with an expired NPDES permit.

The Duke permit is officially on administrative extension, and as such, is in full legal force. I was incorrect in my earlier response regarding needing information from the existing permit holder as we plan on issuing desal plants separate permits. Duke will not be responsible for evaluating the effects of the desal discharge, the desal operator will. The discharges will share an outfall, but we will consider them separate discharges. We regulate Santa Cruz and Scotts Valley waste water treatment plants similarly. The brine discharge may or may not be an issue-- it depends on the details, and at this time we don't have the details, to evaluate or

respond to. We will review desal discharge proposals and respond accordingly.

They are baffled as to why the permit isn't being reviewed until the end of the year. In light of the pending proposals for desalination projects tied to Duke's intake and discharge, "automatic administrative extension" is inappropriate. We consider this much too controversial to process without full public disclosure. **On the subject of the Duke MLPP permit. As we have discussed over the phone, there is no point in renewing the permit now when the 316b regulations are being litigated. We could renew the permit sooner, and leave the 316b regulation issues to the future, but we have to use our limited staff resources efficiently. Renewing the permit sooner, and then renewing again when the 316b issues are resolved is not very efficient. Speculation about a separately permitted brine discharge is not a reason to renew the permit now.**

Help me out here, Peter. We would never want to disseminate misleading or erroneous information about Duke's NPDES permit or your responsibility to make sure Duke (or new owner LS Power) comply with state and federal EPA requirements. Can you bring us up to speed on the protocol, status and timeline regarding this particular permit? "Pending litigation" is a separate issue and doesn't exempt the Regional Water Quality Control Board from due diligence in compelling Duke to review, modify and renew their NPDES permit.

Because there are other power plants in California that have failed to meet 5 year permit renewal guidelines, it doesn't justify such nonperformance for facilities in Monterey County. The Elkhorn Slough National Marine Reserve Estuary is a primary nursery for the Monterey Bay Marine Sanctuary and is integral to the health and well-being of the entire ecosystem.

Once again, thank you for your assistance. It's helpful to have someone we know and trust to provide timely information to stakeholders of impending developments that may impact the Elkhorn Slough. We're grateful that you are that person.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

on 2/17/06 11:47 AM, Peter von Langen at Pvonlangen@waterboards.ca.gov wrote:

Dear Madeleine,
The holder of the NPDES permit will need to send us information in order for us to review their request. We will evaluate each proposal upon receiving the required information and reviewing the existing permits. Thanks for the Herald article, I appreciate the

local info.
Cheers,
Peter

>>> Madeleine Clark <madeleine@got.net> 2/14/2006 1:51 PM
>>>

Dear Peter:

If desalination projects are permitted separately, has Cal Am (or Poseidon) applied for an NPDES permit for their pilot projects in Moss Landing? Are you suggesting they don't need to because they will be able to use Duke's NPDES permit? ("The pilot project flow is extremely small volume compared to the flow covered by the existing MLPP permit on administrative extension.")

It is important to remember that for many years Duke hasn't operated the old part of the power plant that used 90% of the cooling water. What's permitted and what's actually discharged are two different things.

The discharge is 600 feet outside the mouth of the harbor and undoubtedly is a veritable wasteland, even if it is localized. Generally, all power plant discharge sites suffer from the same ill effects, only most don't have the distinction of being the front door to an estuary that serves as a major nursery to the Monterey Bay Marine Sanctuary. If Duke is allowed to add toxic brine to the mix (keeping in mind that discharged dilution water is miniscule compared to permitted amounts) desalination will add a lot more than insult to injury.

I don't understand. First, both you and Roger Briggs tell me the Duke NPDES permit will be addressed in June. Now you've clarified that it won't be looked at until the end of the year. How do you modify the existing permit without benefit of reviewing the old one, especially the amount of discharge actually available to dilute the brine?

Thank you for your immediate attention to my concerns. I'm attaching an article that appeared in today's Monterey County Herald regarding county permitting for the pilot desal projects in Moss Landing. You might have an interest in what is happening on a local level.

Best regards and Happy Valentine's Day.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

on 2/10/06 1:45 PM, Peter von Langen at
Pvonlangen@waterboards.ca.gov wrote:

Dear Madeleine,

Sorry that I haven't been able to reply sooner, I have been swamped dealing with many work issues and am not caught up with email. Desalination projects will be permitted separately and the pending litigation should not effect the pilot desalination project. The pilot project flow is extremely small volume compared to the flow covered by the existing MLPP permit on administrative extension. The existing MLPP permit and conditions will transfer to the new owner. Not sure yet how/if the existing permit will be modified by the pilot project? However, the brine will be significantly diluted by the relatively large flow of the MLPP and should not be detectable at the outfall. Sorry, haven't seen anything on the internet but the preliminary thermal effect results showed that effects were localized to within ~50-100 meters of the outfall. Dierdre Hall is the contact at the Monterey Bay NMS. I don't know if the MBNMS has electronic files or a link ready yet?

All the best,
Peter

Peter von Langen, Ph.D.
Environmental Scientist
Central Coast Water Board
895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
pvonlangen@waterboards.ca.gov
Phone 805-549-3688
Fax 805-788-3580

>>> Madeleine Clark <madeleine@got.net> 2/2/2006
4:22 PM >>>
Dear Peter:

Thank you for the clarification. Since Cal Am is planning to partner a pilot desal facility with the MLPP very soon, how will the pending litigation and Duke's lack of a current NPDES permit effect their project?

Cal Am is planning on using the same outfall as the MLPP. The existing NPDES permit doesn't include brine discharge from a desal plant.

We are interested in the preliminary thermal effects findings that were shared at the MBNMS meeting in October. I was out of town and unable to attend. Can you email me the preliminary studies or the link, if they're available on the internet?

Thanks for your assistance.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

on 2/2/06 2:15 PM, Peter von Langen at
Pvonlangen@waterboards.ca.gov wrote:

Dear Madeleine,
Thank you very much for your email and
the article regarding the Moss Landing
Power Plant (MLPP). In October I
attended a preliminary thermal effects
results meeting put on by MBNMS.

Yesterday I ran into Holly Price
(MBNMS) in Morro Bay at the MLPA
BRTF meeting. We briefly discussed the
thermal effects studies and I look forward
to seeing the final results before we take
up the permit.

I wanted to clarify in your email (and in
the Monterey Weekly article) that the
MLPP permit wont be taken up until at
least late in the year. We need to have the
MLPP lawsuit resolved before taking up
the MLPP permit. We are aiming at
taking up the Morro Bay PP permit
midyear (preliminary July).

Best Regards,
Peter

Peter von Langen, Ph.D.
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pvonlangen@waterboards.ca.gov
Phone 805-549-3688
Fax 805-788-3580

>>> Madeleine Clark
<madeleine@got.net> 1/25/2006 1:56 PM
>>>

Dear Peter:

The study examining the ecological

effects of the thermal plume from Moss Landing Power Plant is scheduled for completion at the end of February 2006. NOAA investigators have recently collected the last of the data and are in the process of analyzing it. Hopefully, they are still on track to complete the project as scheduled. This monitoring project was financed by Duke as a result of mitigation measures secured during the last permit renewal process.

With the pending sale of Duke Energy and the NPDES permit up for review and renewal in June, this information should be vital in determining additional mitigation measures to protect the Elkhorn Slough from further impacts of the Moss Landing power plant.

We can't thank you enough for your desire to make sure that new ownership means a clean slate and greater influence over mandates that protect the slough. We depend on key players like you to assure the public that LS Power Group won't be allowed to pull a fast one, like Duke did with once-through cooling in 2000 during the "energy crisis."

The following is an article that appeared in the Monterey County Weekly last Thursday. For the many who are concerned about the power plant and the use of cooling water from the Elkhorn Slough, it makes interesting reading. We also forwarded it to the Coalition on Responsible Desal (CORD).

CORD is a dedicated group of individuals and environmental organizations from all over California that includes- among others- Save Our Shores, Friends of the Sea Otter, the Ocean Conservancy and Surfrider Foundation (20,000 members statewide) who have a great interest in what happens at Moss Landing.

We look forward to working closely with the CCRWQCB regarding the renewal of the Moss Landing Power Plant NPDES permit.

Sincerely,

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

Peter von Langen - Re: Proposed Schedule for Information-MLPP

From: Madeleine Clark <madeleine@got.net>
To: Peter von Langen <Pvonlangen@waterboards.ca.gov>
Date: 6/19/2006 6:01 PM
Subject: Re: Proposed Schedule for Information-MLPP

Dear Peter:

I've heard from several sources that both Pajaro/Sunny Mesa and Cal Am have received permits for their pilot desal plants to discharge brine at the MLPP outfall. Doesn't Pajaro/Sunny Mesa have its own outfall? It is our understanding that Monterey County (environmental health) has not granted P/SM a permit to discharge brine from a pilot project for a number of reasons.

What's the truth? We were told by RWQCB staff that both Cal Am and P/SM had submitted applications, but neither had actually received a permit.

We don't know what to believe. Can you clear this up for us?

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

on 6/19/06 11:32 AM, Peter von Langen at Pvonlangen@waterboards.ca.gov wrote:

Dear Madeleine,
I checked on the status of the mailing, it should go out tomorrow.
Regards,
Peter

>>> Madeleine Clark <madeleine@got.net> 6/16/2006 9:52 AM >>>
Thanks, Peter. I suspect that we will have this by Monday?
Have a great weekend.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130

on 6/13/06 1:21 PM, Peter von Langen at Pvonlangen@waterboards.ca.gov wrote:

Dear Madeleine Clark,
Wanted to give you a quick update that later this week we will mail you a response to your email below.
Peter

Peter von Langen, Ph.D.
Environmental Scientist
Central Coast Water Board

895 Aerovista Place, Suite 101
San Luis Obispo, CA 93401
pvonlangen@waterboards.ca.gov
Phone 805-549-3688
Fax 805-788-3580

>>> Madeleine Clark <madeleine@got.net> 6/8/2006 1:51 PM >>>

Dear Roger Briggs and Peter von Lagen:

Please consider this a formal request for information regarding the MLPP Proposed Schedule for Information Collection (PIC), as required under the USEPA's Phase II 316(b) regulations. Specifically, please forward us a copy of the schedule set forth under which Duke (or LS Power Group) must undertake and complete studies, including the Comprehensive Demonstration Study (CDS) required by Phase II rules.

If the studies have been completed, please send us a copy via e-mail. If an electronic file is unavailable, we'd like to have a hard copy.

We'd also like to have copies of both Poseidon and Cal Am's desalination pilot plant permit applications to add brine to the MLPP discharge. We'd like to know the status and staff recommendations regarding these applications. Both Poseidon and Cal Am project managers have notified members of the public that applications have been approved and permits were granted by the RWQCB.

Harvey Packard informs us this is not the case. At any rate, please provide us with a status report regarding these applications and any other developments pertaining to the MLPP and desalination in Moss Landing.

Thank you for your assistance.

Madeleine Clark, Director
Elkhorn Slough Coalition
(831) 663-3130



Alan C. Lloyd, Ph.D.
Agency Secretary

California Regional Water Quality Control Board

Central Coast Region

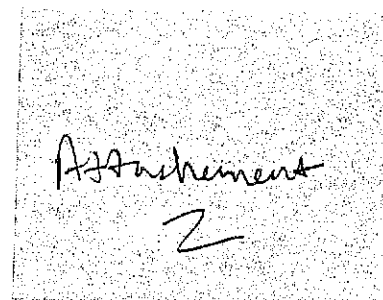
Internet Address: <http://www.waterboards.ca.gov/centralcoast>
895 Aerovista Place, Suite 101, San Luis Obispo, California 93401-7906
Phone (805) 549-3147 • FAX (805) 543-0397



Arnold Schwarzenegger
Governor

March 30, 2006

Ms. Madeleine Clark, Director
Elkhorn Slough Coalition
8145 Messick Road
Prunedale, CA 93907



Dear Ms. Clark:

CALIFORNIA AMERICAN WATER PROPOSED PILOT DESALINATION PROJECT

This letter is to acknowledge the receipt by the Central Coast Regional Water Quality Control Board (Central Coast Water Board) of your email dated February 23, 2006. Central Coast Water Board staff was unable to open the letter attached to the email until March 24, 2006. This attachment included questions regarding the bearing of California American Water's (Cal Am) proposed pilot desalination project on the Duke Moss Landing Power Plant NPDES Permit. The questions in the attachment were substantially similar to those asked in your February 22, 2006, email to Central Coast Water Board staff, who replied to these questions by email on March 2 and March 23, 2006. We provide this response for additional clarification.

Central Coast Water Board permitting of Cal Am's proposed pilot desalination project has no bearing on the renewal of the permit for the Duke Moss Landing Power Plant. We will process and approve, if appropriate, Cal Am's request for a discharge permit as a project completely separate from the power plant. Since the fresh water produced by the pilot plant will not be used, Cal Am will recombine the fresh water and the brine downstream of the desalination plant, which means that the discharge will not be significantly different from the intake water. The same salt water brought into the plant will be discharged, so the proposed discharge from Cal Am's proposed pilot project will have no measurable effect on the environment.

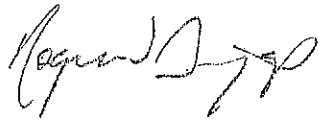
In the attachment, you referred to the administrative extension of the permit for the power plant. You said pending litigation does not exempt the Regional Board from proceeding with permit reissuance. The Duke permit is officially on administrative extension, and as such, is in full legal force. We are waiting for two court cases to be resolved before taking up the permit again. The Voices of the Wetlands case is still not completely resolved and also, we are waiting for the Second Circuit Court of Appeals case to resolve the 316(b) mitigation issue. The latter case should be decided by late 2006. There is no point in renewing the permit now when the 316b regulations are being litigated. We could renew the permit sooner, and leave the 316b regulation issues to the future, but we have to use our limited staff resources efficiently. Renewing the permit sooner, and then renewing again when the 316b issues are resolved is not very efficient.



For your information, the Pajaro-Sunny Mesa Community Services District recently also applied to the Central Coast Water Board for a permit to discharge brine from a pilot desalination plant. The plant will be located on the former National Refractories property, and will use the existing harbor intake and existing outfall to Monterey Bay. The proposed project is similar to Cal Am's, and we expect its effects will be similarly insignificant.

If you have questions, please call Peter von Langen at the Central Coast Water Board (805-549-3688).

Sincerely,



Roger W. Briggs
Executive Officer

Filename and Path: S:\NPDES\NPDES Facilities\Monterey Co\Duke Energy Moss Landing\3-06 Response to Madeleine Clark.doc





California Regional Water Resources Control Board

Central Coast Region



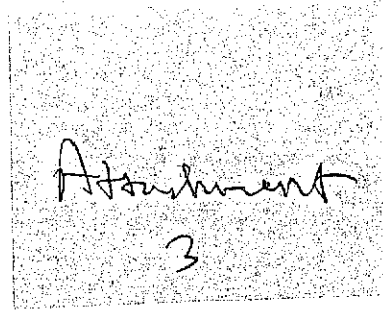
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Arnold Schwarzenegger
Governor

nd S. Adams
S
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on al Protection

June 20, 2006

Ms. Madeleine Clark
Elkhorn Slough Coalition
8145 Messick Road
Prunedale, CA 93907



Dear Ms. Clark:

RE: MOSS LANDING POWER PLANT (MLPP) PROPOSAL FOR INFORMATION COLLECTION AND COMPREHENSIVE DEMONSTRATION STUDY

We are responding to your June 8, 2006 email request. The following outlines our understanding of your June 8 email:

1. You requested information regarding the Moss Landing Power Plant Proposal for Information Collection, as required under the USEPA's Phase II 316(b) regulations. Specifically, you request the schedule by which Duke (or LS Power Group) must undertake and complete the Comprehensive Demonstration Study required by Phase II rules.
2. You requested copies of Poseidon and Cal American's desalination pilot plant permit applications, and asked about the status of these applications and staff's recommendations regarding these applications.

Regarding your first question, a discharger must submit a Proposal for Information Collection and a Comprehensive Demonstration Study (hereafter collectively referred to as CDS) as part of their permit renewal package unless they request an extended date for the submittal (40 CFR § 125.98(a)(1)). Duke Energy requested an extended schedule for submittal of their CDS when we met with them to discuss their permit renewal options last year. The regulations allow the Water Board to set a due date of not later than January 8, 2008, for submittal of the CDS. As we said to Duke Energy staff, our intention is to include a schedule for submittal of the CDS in the draft permit. A CDS contains many elements, most of which have already been submitted to the Water Board as part of the previous permit renewal and Energy Commission Certification process. You are welcome to visit our office and review the previously submitted information, which includes a description of the power plant and its operations, the physical setting, the environmental assessments that were done, and the alternatives analyses. We will provide copies at your request pursuant to the Public Records Act. You may already have copies of this information.

The main thing that has not been submitted is the information associated with LS Power's chosen compliance alternative per the new 316(b) Regulations. LS Power has not chosen one of the five available compliance alternatives because of the federal lawsuit regarding the 316(b) regulations. The 2nd Circuit Court heard oral arguments earlier this month, and a decision is expected this fall. As we have explained to you previously, we do not plan to bring a draft permit to the Water Board until we know the Court's decision. LS Power and other utilities cannot realistically choose a compliance alternative without knowing the Court's decision.

Regarding your second question, we have attached the permit applications for the pilot desalination plant from Poseidon Resources Corporation. Staff requested additional information from Poseidon regarding their permit application. Copies of the information requests are also attached. Regional Board staff does not have a complete application from Cal American Water. When we receive the requested information, we will recommend that the Water Board enroll the pilot desalination plants under the Central Coast Water Board General Permit for Discharges with Low Threat to Water Quality. At this point staff does not know the dischargers response to the information requests, so we do not know when the pilot plants will be on the Regional Board agenda. As we previously mentioned to you, status reports regarding the Moss Landing Power Plant and the desalination pilot projects will be on the Water Board's September 2006 agenda, and the meeting will be in Monterey. We would prefer to have the Board consider the desalination plants at this meeting. If so, there will be an opportunity for public comment on these items.

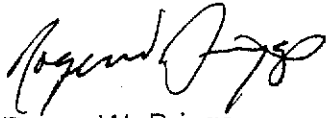
If you would like to review specific documents, please schedule an appointment with us to review our records, and/or contact the California Energy Commission to review their files. It will take Regional Board staff approximately one week to tag the responsive records in our files, pursuant to above items 1 and 2, and have them available for your review and reproduction. We will notify you if the tagged files are available sooner. Please note that you can review Regional Board public records at any time during our regular business hours, 8 a.m. to 5 p.m., Monday through Friday, except for holidays, without waiting for staff to tag the files.

If you want us to make copies, the copying will take an additional week. Any request for copies of 21 pages or more will be made in-house at your expense. We charge the actual cost of copying (cost of making the copies and staff time to make them), which is approximately 10 cents per page. If staff is not available, we will use a copy service; in that case, the cost will be the actual charges by the copy service. If we make the copies in-house, we require payment of copy charges before providing the copies, and will require a deposit of 25% of the estimated cost before making the copies. Alternatively, you can arrange to bring in a bonded copy service to make the copies for you, or we can send the copies to a bonded copy service of your choice as long as you make arrangements for direct payment with the copy service.

Our Public Records Act guidelines are available at:
http://www.waterboards.ca.gov/public_records/public_recordsact_guidelines.pdf.

If you have questions, please contact Peter von Langen at 805-549-3688 or
pvonlangen@waterboards.ca.gov or Michael Thomas at 805-542-4623 or
mthomas@waterboards.ca.gov.

Sincerely,



Roger W. Briggs
Executive Officer

Attachments:
Pilot Desalination Plant Application from Poseidon Resources Corporation

cc:
Lee Genz
LSP Moss Landing, LLC
P.O. Box 690
Moss Landing, CA 95039-0690

S:\Seniors\Shared\NPDES\NPDES Facilities\Monterey Co\Duke Energy Moss Landing\PERMIT RENEWAL 2005\6-06 letter to
Madeleine Clark.doc

**CALIFORNIA STATE
LANDS COMMISSION**

CRUZ M. BUSTAMANTE, *Lieutenant Governor*
STEVE WESTLY, *Controller*
MICHAEL C. GENEST, *Director of Finance*



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**RESOLUTION BY THE CALIFORNIA STATE LANDS COMMISSION REGARDING
ONCE-THROUGH COOLING IN CALIFORNIA POWER PLANTS**

WHEREAS, The California State Lands Commission (Commission) and legislative grantees of public trust lands are responsible for administering and protecting the public trust lands underlying the navigable waters of the state, which are held in trust for the people of California; and

WHEREAS, the public trust lands are vital to the recreational, economic and environmental values of California's coast and ocean; and

WHEREAS, the Commission has aggressively sought correction of adverse impacts on the biological productivity of its lands including, litigation over contamination off the Palos Verdes Peninsula and at Iron Mountain, the adoption of best management practices for marinas and litigation to restore flows to the Owens River; and

WHEREAS, California has twenty-one coastal power plants that use once-through cooling, the majority of which are located on bays and estuaries where sensitive fish nurseries and populations exist for many important species, including species important to the commercial and recreational fishing industries; and

WHEREAS, these power plants are authorized to withdraw and discharge approximately 16.7 billion gallons of ocean, bay and Delta water daily; and

WHEREAS, once-through cooling significantly harms the environment by killing large numbers of fish and other wildlife, larvae and eggs as they are drawn through the screens and other parts of the power plant cooling system; and

WHEREAS, once-through cooling also significantly adversely affects marine, bay and estuarine environments by raising the temperature of the receiving waters, and by killing and displacing wildlife and plant life; and

WHEREAS, various studies have documented the harm caused by once-through cooling including one study that estimated that 2.2 million fish were annually ingested into eight southern California power plants during the late 1970s and another that estimated that 57 tons of fish were killed annually when all of the units of the San Onofre Nuclear Generating Station were operating; and

Attachment
4

WHEREAS, the public trust doctrine must be acknowledged and respected by the Commission in all of the Commission's work, thus, the least environmentally harmful technologies must be encouraged and supported by the Commission; and,

WHEREAS, once-through cooling systems adversely affect fish populations used for subsistence by low-income communities and communities of color thereby imposing an undue burden on these communities and

WHEREAS, regulations adopted under Section 316(b) of the federal Clean Water Act recognize the adverse impacts of once-through cooling by effectively prohibiting new power plants from using such systems, and by requiring existing facilities to reduce impacts by up to 90-95%; and

WHEREAS, state law under the Porter-Cologne Water Quality Control Act requires the state to implement discharge controls that protect the beneficial uses of the waters and habitats affected by once-through cooling; and

WHEREAS, alternative cooling technologies and sources of cooling water, such as the use of recycled water, are readily available, as witnessed by their widespread use at inland power plants and many coastal plants nationwide; and

WHEREAS, the Governor's Ocean Action Plan calls for an increase in the abundance and diversity of aquatic life in California's oceans, bays, estuaries and coastal wetlands, a goal which can best be met by prohibiting, phasing out, or reducing to insignificance the impacts of once-through cooling; and

WHEREAS, members of the California Ocean Protection Council have called for consideration of a policy at its next meeting to discourage once-through cooling; and

WHEREAS, the California Energy Commission and the State Water Resources Control Board have authority and jurisdiction over the design and operation of power plants and are conducting studies into alternatives to once-through cooling, such as air cooling, cooling with treated wastewater or recycled water and cooling towers; and

WHEREAS, in its 2005 Integrated Energy and Policy Report, the California Energy Commission adopted a recommendation to work with other agencies to improve assessment of the ecological impacts of once-through cooling and to develop a better approach to the use of best-available retrofit technologies; and

WHEREAS, it is premature to approve new leases or extensions, amendments or modifications of existing leases to include co-located desalination facilities or other uses of once-through cooling water systems until first considering whether the desalination facility would adversely affect compliance by the power plant with requirements imposed to implement both the federal Clean Water Act Section 316(b) requirements and any additional requirements imposed by the State Water Resources Control Board and appropriate Regional Water Quality Control Board under state law and their delegated Clean Water Act authority; and

WHEREAS, at many locations, there are alternative, feasible and available subsurface seawater intake technologies and practices for coastal desalination facilities that do not rely on surface seawater intakes used for once-through cooling; and

WHEREAS, the elimination, or reduction to insignificance of the adverse environmental impacts, of once-through cooling technologies can be accomplished without threatening the reliability of the electrical grid; therefore, be it

RESOLVED, by the California State Lands Commission that it urges the California Energy Commission and the State Water Resources Control Board to expeditiously develop and implement policies that eliminate the impacts of once-through cooling on the environment, from all new and existing power plants in California; and be it further

RESOLVED, that as of the date of this Resolution, the Commission shall not approve leases for new power facilities that include once-through cooling technologies; and be it further

RESOLVED, that the Commission shall not approve new leases for power facilities, or leases for re-powering existing facilities, or extensions or amendments of existing leases for existing power facilities, whose operations include once-through cooling, unless the power plant is in full compliance, or engaged in an agency-directed process to achieve full compliance, with requirements imposed to implement both Clean Water Act Section 316(b) and California water quality law as determined by the appropriate agency, and with any additional requirements imposed by state and federal agencies for the purpose of minimizing the impacts of cooling systems on the environment, and be it further

RESOLVED, that the Commission shall include in any extended lease that includes once-through cooling systems, a provision for noticing the intent of the Commission to consider re-opening the lease, if the appropriate agency has decided, in a permitting proceeding for the leased facility, that an alternative, environmentally superior technology exists that can be feasibly installed, and that allows for continued stability of the electricity grid system, or if state or federal law or regulations otherwise require modification of the existing once-through cooling system; and, be it further

RESOLVED, that the Commission calls on public grantees of public trust lands to implement the same policy for facilities within their jurisdiction; and be it further

RESOLVED, that the Commission's Executive Officer transmit copies of this resolution to the Chairs of the State Water Resources Control Board, the California Energy Commission, and the California Ocean Protection Council, all grantees, and all current lessees of public trust lands that utilize once-through cooling.

Adopted by the California State Lands Commission on April 17, 2006